

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 23RD AUGUST 2007 / 1ST BHADRA 1929

Tr.P(Crl.).No. 54 of 2007()

CC.137/2006 of J.M.F.C.-II(FOREST OFFENCES),PUNALUR
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PETITIONER: PETITIONER

DEEPA THANKAPPAN, D/O. SYAMALA
THANKAPPAN, SYAM NIVAS, EDAMON P.O., KOLLAM.

BY ADV. SRI.S.RAJEEV

RESPONDENTS: RESPONDENTS

1. PRABHASAN NAIR, S/O. BHASKARAN PILLAI,
THENGUNMOOLAVATTOM, THOLICODU P.O., PUNALUR.
2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR ADV.SRI.GIKKU JACOB

THIS TRANSFER PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD
ON 23/08/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R.BASANT, J

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Tr.Petition(CrI) No. 54 Of 2007

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Dated this the 23rd day of August, 2007

ORDER

The petitioner is the accused in a prosecution under Sec.138 of Negotiable Instrument Act. That case is now pending before the Judicial First Class Magistrate Court -II Punalur as C.C.No.137/07. Earlier that case was pending before the JFMC-III Punalur. The petitioner as complainant had filed another private complaint. In that private complaint she had alleged that offence of forgery etc. has been committed in respect of this cheque also. Both cases were pending before the Judicial First Class Magistrate Court -III Punalur. One of those cases- the one case under Sec.138 alone was transferred by the learned Chief Judicial Magistrate for administrative reasons. The other continues to be pending before the learned Chief Judicial Magistrate -3 Punalur. According to the petitioner , the cases are in the nature of a case and counter case. The allegation is under Sec.138 of the Negotiable Instrument Act in one case and in other of forgery in respect of very same cheque is alleged. The

petitioner urges that a proper and just disposal of both these cases can be achieved only if they are considered and disposed of by the same judicial mind. Whether one calls them a case and counter case or not principles which insist that case and counter case must be disposed of by the same judicial mind must apply squarely in the given circumstances submits the counsel for the petitioner. The petitioner filed an application before the learned Sessions Judge. The learned Sessions Judge by Annexure A3 order rejected the prayer holding that the cases are not in the nature of a case and counter case.

2. I do not want to embark on an academic discussion as to whether expressions case and counter case can be employed in the given situation. I do totally agree with the learned counsel for the petitioner that considering the nature of the contentions which parties want to raise and establish in these two prosecutions, interest of justice will be best secured by directing the disposal of both the cases by the same judicial personnel. I am satisfied in these circumstances that the request can be allowed.

3. Though notice was ordered to the respondent

(complainant in the 138 prosecution) he has not chosen to appear before me after due service. In these circumstances, this petition is allowed. C.C.No.137/2006 pending before the Judicial First Class Magistrate Court-II is transferred to Judicial First Class Magistrate Court- III where C.C.No.591/07 is pending.

(R.BASANT, JUDGE)

sj